IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Regular Second Appeal No.4073 of 2004
Date of decision:27.09.2007

Rachhpal Singh and another **.....Appellants**

Versus

Nirmal Kaur and others **....Respondents**

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: **Mr. Parminder Singh, Advocate,**
for the appellants.
Mr. K.S.Cheema,Advocate
for respondents No.1 & 2.

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RAJESH BINDAL,J.

This order will dispose of RSA No.4073 and 4074 of 2004, which have been dealt with and disposed of by the Court below by a common order. However, the facts are being taken from RSA NO. 4073 of 2004.

The defendants No.1 & 2 are in appeal before this Court against concurrent finding of fact by both the Courts below, whereby the suit filed by Tarsem Singh, for declaration to the effect that plaintiff (now represented by legal heirs (respondents No.1 and 2 in the appeal before this Court) is owner in possession of the suit property to the extent of 4/9 shares being the co-parcenary property.

On the other hand, the defence raised in the suit was that the property in question was not a co-parcenary property and in fact the deceased Udham Singh, grand father of the appellants and father of the plaintiff had executed a registered Will in their favour on 12.03.1987. However, both the courts below held that the Will had been executed under suspicious circumstances and consequently directed that the property should be dissolved as per the natural succession between two sons and one daughter of deceased Udham Singh whose property was in dispute.

Learned counsel for the appellants submitted that the Will, which is a registered document, could not be discarded in the manner, it has been done by the courts below. It had come on record that one of the son namely Tarsem Singh was living separately and was in fact in litigation with the father. The testator after executing the Will on 12.03.1987 died more than 7 years later in August, 1994. Attesting witnesses were produced. The mere fact that there was no recital about the daughter in the Will and complete description of the property was not mentioned, are not the suspicious circumstances to hold the Will to be non-genuine.

On the other hand, counsel for the contesting respondents No.1 and 2 submitted that the learned courts below, on appreciation of the evidence, have taken a possible view of the matter and this Court in exercise of jurisdiction under Section 100 Code of Civil Procedure would not like to substantiate its opinion on re-appreciation of the evidence as the appeal would be maintainable on a substantial question of law only, which does not arise out of the pleadings in the present case. The Will propounded by the appellants was full of various suspicious circumstances. The mother of the appellants played an active role in execution of the Will after getting the earlier Will executed by the deceased Udham Singh in favour of two sons superceded, as Udham Singh was living with them. Another suspicious circumstance is that the daughter has not even been referred to in Will in question and further no reasons for depriving another son namely Tarsem Singh has been given. As far as reference to the litigation is concerned, he submitted that the alleged Will sought to be presented is dated 12.03.1987. Whereas there was no litigation between Udham Singh and his son Tarsem Singh upto that date as the litigation started only in the year 1992, so there cannot be any possibility to plead that the relations of Udham Singh with his son Tarsem Singh were strained. Concluding his arguments, he submitted that the learned Courts below have rightly directed that the property be devolved on all the legal heirs equally as per natural succession, which is the most reasonable order.

Having heard learned counsel for the parties, I find merit in the contentions raised by learned counsel for the respondents. Both the Courts below discussed various circumstances leading to the execution of the Will, propounded by the appellants, thread-bare and reached to a conclusion that there were suspicious circumstances leading to the execution of Will inspite of the fact that the Will was a registered document. It had come on record that, though, in the Will, it was mentioned that the appellants were serving their grand father who had executed the Will in their favour, excluding both sons but in fact they were minors at the relevant time. It is nowhere mentioned in the Will as to why both the sons and the daughter were excluded from inheritance when in the earlier Will executed by the deceased Udham Singh in 1982, the property was given to both the sons. No special circumstance, to cancel the earlier Will, is mentioned in the subsequent Will sought to be propounded by the appellants. The plea that the executant of the Will had strain relations with his son Tarsem Singh is also found to be factually incorrect on the date of execution of the Will. The same is sought to be justified relying on the events, which took place after the execution of the Will, which cannot be permitted. The only reason that new Will came into existence was that Udham Singh was living with Jagjit Singh, father of the appellants and he got the second Will executed in favour of his sons in which mother of the appellants played an active role .

Keeping in view these facts on record, I find that the courts below have taken possible view of the matter and it cannot be held that in the facts and circumstances of the case, the conclusion arrived at by the courts below is perverse. Accordingly, I do not find that any substantial question of law arises for determination in the present appeal, the same is dismissed.

September 27 , 2007 **(RAJESH BINDAL)**
nt **JUDGE**